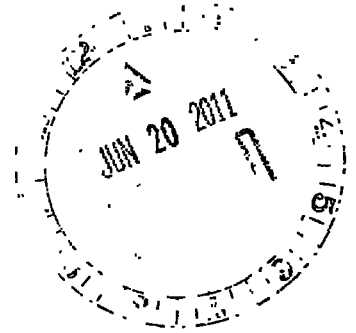


**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



CF Industries, Inc.,

Petitioner,

v.

Indiana & Ohio Railway  
Point Comfort and Northern Railway  
Michigan Shore Railroad,

Respondents.

STB Finance Docket No. FD 35517

Office of the  
JUN 20 2011  
Public Board

230144

**REPLY OF CF INDUSTRIES, INC. TO REPLY OF INDIANA & OHIO RAILWAY  
COMPANY, POINT COMFORT AND NORTHERN RAILWAY COMPANY AND  
MICHIGAN SHORE RAILROAD, INC.**

CF Industries, Inc. ("CF") hereby requests that the Surface Transportation Board ("Board") grant CF leave to file this reply to the Reply of Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company and Michigan Shore Railroad, Inc., filed June 6, 2011, in the captioned proceeding ("RailAmerica Reply"). The Board's rules prohibit replies to replies. 49 C.F.R. 1104.13(c). However, the Board may waive this rule for good cause shown. *See Tongue River R.R. Co., Inc. – Constr. and Operation – W. Alignment*, STB Finance Docket No. 30186 (Sub-No. 3), 2011 WL 2421152 (S.T.B., June 15, 2011); *CSX Corp. – Control – Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, STB Finance Docket No. 28905 (Sub-No. 28), 2 S.T.B. 554 (Sept. 3, 1997). Good cause exists in this instance, as this reply will clarify the narrow issue before the Board and will not prejudice Indiana & Ohio Railway Company ("IORY"), the Point Comfort and Northern Railway Company ("PCN") and Michigan Shore Railroad, Inc. ("MSR" and together with the IORY and PCN, the "RailAmerica

Railroads”). As such, CF requests that the Board waive 49 C.F.R. 1104.13(c) and accept this reply.

On May 17, 2011, CF filed the Petition of CF Industries, Inc. for Declaratory Order (“Petition for Declaratory Order”) requesting that the Board declare certain tariffs of the RailAmerica Railroads invalid and unenforceable and granting such other relief as the Board may deem appropriate under the circumstances. In the RailAmerica Reply, the RailAmerica Railroads assert that CF’s Petition for Declaratory Order “is nothing more than a thinly veiled rate reasonableness complaint and should be prosecuted as such by CFI . . . .” RailAmerica Reply at 4. This assertion is incorrect. The issue before the Board is whether the purported additional safety measures contained in the tariffs of the RailAmerica Railroads are impermissible given the presumption established in *Consolidated Rail Corp. v. ICC*, 646 F.2d 642 (D.C. Cir.); cert denied 454 U.S. 1047 (1981) (“*Conrail*”) absent RailAmerica’s meeting the burden to overcome this presumption. This is a threshold issue and, as such, is wholly separable from any rate reasonableness determination.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "P.E. Groomes", is written over a horizontal line.

Patrick E. Groomes  
Fulbright & Jaworski L.L.P.  
801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004


June 20, 2011

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 20th day of June 2011, the foregoing reply has been served by express overnight courier to:

Scott G. Williams  
Senior Vice President and General Counsel  
RailAmerica  
7411 Fullerton Street Suite 1300  
Jacksonville, Florida 32256

Louis E. Gitomer  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(410)296-2250  
Lou@lgraillaw.com

  
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Patrick E. Groomes